



JPN

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Horst SURBURG et al.

Application No.: 10/626,178

Filed: July 24, 2003

Conf. No.: 3190

For: RHINOLOGICALLY ACTIVE SUBSTANCES

Attorney Docket No.: 3968.088

Customer No.: 000041288

PETITION UNDER 37 CFR 1.53(e)(2)

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Notice of Incomplete Non-Provisional Application Filed under 37 CFR 1.53(b), dated May 25, 2004, Applicants hereby petition the Commissioner to review said Notice and to accord the above-captioned application for patent its filing date of July 24, 2003.

The Commissioner is hereby authorized to deduct the required Petition fee of \$130.00 under 37 C.F.R. § 1.17(h), and any other fee required for consideration of this petition, from Deposit Account 16-0877. Upon the granting of this Petition, a refund in the same amount is respectfully requested.

Applicants assert that a complete specification as prescribed by 35 U.S.C. § 112 was submitted on July 24, 2003, and that Applicants are therefore entitled to the filing date of July 24, 2003. In support thereof, Applicants state:

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1. That an application for a Divisional Application of then pending prior parent Application No. 09/988,860 was filed by Carrie L. Bootcheck, Reg. No. 50,712, on July 24, 2003. The application papers included a copy of the published parent application, US 2002/0120014 A1.

2. That the specification of published parent application, Application No. 09/988,860, published as Publication No. US 2002/0120014 A1, contains the identical disclosure and claims as did the parent application as filed. No amendments to the claims or specification made in the parent case were entered in the published application.

3. That a copy of the published parent application, US 2002.0120014 A1, was received by the USPTO on July 24, 2003, as shown on the copy of the return postcard appended hereto.

4. That the published parent application, Publication No. US 2002/0120014 A1, is a complete specification as prescribed by 35 U.S.C. § 112. Applicants assert that the published parent application meets all of the requirements of the six paragraphs of 35 U.S.C. § 112. Further, Applicants assert that the published parent application also meets the requirements of 35 U.S.C. § 112 as set forth in 37 C.F.R. § 1.53(b) because the published parent application: (a) contains a description pursuant to, and meeting the requirements of, 37 C.F.R. § 1.71; (b) contains at least one claim (there are 16) pursuant to 37 C.F.R. § 1.75; and (c) contains no figure under 37 C.F.R. § 1.81(a) because none was required in the parent case.

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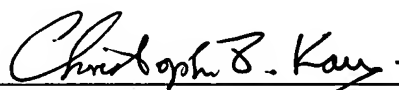
5. In view of the above, Applicants respectfully request the Commissioner to review the Notice of Incomplete Nonprovisional Application mailed May 25, 2004, and to accord the above-captioned application for patent a filing date of July 24, 2003.

6. Finally, Applicants assert that the instant application is a proper Divisional Application under 37 C.F.R. § 1.53(b), and that no new Oath or Declaration is required because one was properly filed in the parent case on January 25, 2002.

Acknowledgment of receipt of the above documents is respectfully requested.

Respectfully submitted,

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Date: July 26, 2004